

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAUL CASTELLANOS,

Petitioner,

No. CIV S-00-0360 DFL JFM P

vs.

SUZAN L. HUBBARD, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's August 24, 2005 denial of his application for a writ of habeas corpus and a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c) and Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debateable among jurists of reason," could be resolved differently by a different

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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner seeks a certificate of appealability on his claim that a sentence of
4 twenty-five years to life in prison constitutes cruel and unusual punishment in violation of the
5 Eighth Amendment. Petitioner has made the showing required for a certificate of appealability
6 with respect to this claim.

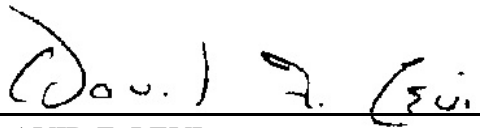
7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Petitioner’s August 24, 2005 request for a certificate of appealability is
9 granted;

10 2. A certificate of appealability is issued for petitioner’s claim that his prison
11 sentence violates the Eighth Amendment; and

12 3. The Clerk of the Court is directed to process petitioner’s appeal to the United
13 States Court of Appeals for the Ninth Circuit.

14 DATED: 11/11/2005

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18 DAVID F. LEVI
19 United States District Judge
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.